



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 31, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review decisions by the Wisconsin Department of Health Services, by Milwaukee Enrollment Services, in regards to overpayments of Medical Assistance, a telephone hearing was held on December 30, 2015, at Milwaukee, Wisconsin. Hearings set for September 29, 2015, November 4, 2015, and December 3, 2015, were rescheduled at the petitioner's request.

The issue for determination is: Whether the county agency correctly determined that the petitioner was overpaid a total of \$4,271 of Medical Assistance in the period of February – October, 2014, due to “member error”.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], Overpayment Specialist  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She received continuous MA coverage for herself and her son, [REDACTED] in the period of February – October, 2014, without a premium or co-pay requirement.

2. The petitioner became employed by [REDACTED] effective November 12, 2013. Subsequently, she enrolled in her employer's subsidized health insurance, United Healthcare Choice, receiving coverage for herself and [REDACTED] effective December 12, 2013. See, Exhibits # 8 & #9.
3. Within 10 days of receiving employer-subsidized health insurance, effective December 12, 2013, the petitioner wrote a letter to the Department informing it that she no longer needed BadgerCare, and she mailed it to the Department's post office box for BadgerCare premium payments enclosing her cut up plastic ForwardHealth card for BadgerCare. The agency denies receipt, as there is no record of the letter or the card being received.
4. There is no notation in Case Comments for the petitioner's case of any such specific request to discontinue BadgerCare coverage. See, Exhibit #2.
5. On or about December 26, 2013, an agency worker noted in Case Comments as follows: "Working UIB PP is no longer receiving UI case already updated." See, Exhibit #2.
6. There is no petitioner initiated contact with the agency after December 26, 2013, through at least November 7, 2014, at which time Case Comments reveal that mail had returned to the agency and the case was closed. See, Exhibit #2.
7. Neither the petitioner nor her son received any specific Medical Assistance covered services, equipment or medication during the period of February – October, 2014.
8. On May 19, 2015, and again on July 3, 2015, the agency received State Wage Record reports that indicated that the petitioner had received more income in the period of February – October, 2014, than the agency had been budgeting for her in each month in that period, and the matter was referred for benefit recovery investigation.
9. On July 3, 2015, the agency issued a request for verification of the petitioner's earnings in at least the period of November 1, 2013 – October 31, 2014, to her employer.
10. On July 9, 2015, the petitioner's employer provided verification of her wages in the requested period.
11. On July 16, 2015, the agency issued a WISCONSIN MEDICAID AND BADGERCARE PLUS OVERPAYMENT NOTICE to the petitioner informing her that the agency had determined she had been overpaid \$3,624 in BadgerCare benefits in the period of February – October, 2014, due to "CLIENT FAILED TO REPORT EARNED INCOME EXCEEDING THE PROGRAM REPORTING REQUIREMENTS FOR BCPA TO THE AGENCY IN A TIMELY MATTER". This is Claim No. [REDACTED], and represents the amount that Medical Assistance paid on behalf of the petitioner that she would have been responsible to pay as premiums (for herself) if her earned income had been properly budgeted for BadgerCare. A worksheet demonstrating the computation of this claim was attached, and shows that it includes overpayment amounts for November & December, 2014, as well, which are not identified in the NOTICE. See, Exhibit #7, pp. 1-5.
12. Also on July 17, 2015, the agency issued a second MEDICAL ASSISTANCE / BADGERCARE / BADGERCARE PLUS OVERPAYMENT NOTICE to the petitioner informing her that the agency had determined she had been overpaid \$647 in BadgerCare benefits in the period of February – October, 2014, due to "FAILURE TO REPORT HOUSEHOLD INCOME EXCEEDING PROGRAM LIMITS – CLIENT ERROR". This is Claim No. [REDACTED], and represents an additional amount that Medical Assistance paid on behalf of the petitioner that she would have been responsible to pay as premiums (for [REDACTED]) if her earned income had been properly budgeted for BadgerCare. A worksheet demonstrating the computation of this claim was attached. See, Exhibit #7, pp. 1-7.
13. On August 31, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the two overpayment determinations, identified in Findings of Fact # 11 & 12, above, which totaled \$4,271.

## DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. In this case no premiums were paid originally, so the overpayment is the full amount of the premiums that should have been paid.

I have reviewed the exhibits and the testimony very, very carefully. I find the petitioner to have testified in a clear, consistent, and credible manner that she did report the new job with [REDACTED] and her new health insurance, within 10 days of her coverage starting in December, 2013. I likewise believe her when she testified that she cut up the card and sent it to the Department's BC+ premium lock box, and did not attempt to use BC+ thereafter at any time in the remainder of 2013 or 2014. (In essence she was claiming she had declined the aid.) Both assertions are corroborated by the fact that Case Comments demonstrate no contact with her from December 26, 2013, through at least November 17, 2014. Indeed, the Comments do not show any contact with the agency in 2014 or 2015 either. See, Exhibit #2. Also, these Comments seem to indicate that Unemployment Insurance payments had just ended on December 26, 2013, and that the case had very recently been updated to reflect such a change. In addition, a November 1, 2013, entry indicates that earned income verification was updated about that time as well.

The agency could not provide any direct testimony or affirmative documents showing rebutting the petitioner's assertion that she reported her new job and new insurance access in late December, 2013.

Accordingly, I conclude that she did not commit a misstatement or omission of her income and access to private health insurance in 2013 or 2014. Rather, on the credible evidence, I find that she did report it to the Department, but none of the Department's agents correctly entered this change in employment, access to health insurance, and income change. The overpayments here were caused by agency error and cannot be recovered under Wisconsin law. Both claims are reversed and must be rescinded.

## CONCLUSIONS OF LAW

Petitioner was overpaid MA because the agency failed to act on reported changes in employment, income and insurance access to private insurance and a declination of BadgerCare Plus, i.e., both overpayments occurred due to agency processing error; and both must be rescinded.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the agency with instructions to: reverse and rescind Medical Assistance overpayment Claim Nos. [REDACTED] (\$3,624) and [REDACTED] (\$647) entered against the petitioner on July 16-17, 2015; and cease all efforts at recovery of these claims from her. These actions shall be completed within 10 days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

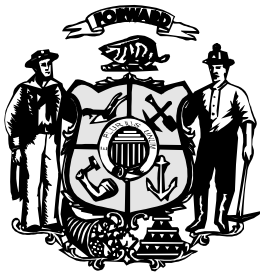
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 12th day of January, 2016

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 12, 2016.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability